



MAINE MERCHANTS ASSOCIATION INC.

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The Voice of Maine Merchants

October 7, 2009

Senator Lawrence Bliss, Chair
Representative Charles Priest, Chair
Distinguished members of the Judiciary Committee

Re: Maine Merchant Association Comments on Public Law 2009, Chapter 230 (LD 1183), An Act to Prevent Predatory Marketing Practices Against Minors

Dear Senator Bliss, Representative Priest, and Members of the Committee:

Thank you for permitting Maine Merchants Association and others to comment on this statute that became law on September 12, 2009. The organization deeply appreciates the willingness of legislative leaders, the attorney general, the governor, the sponsor of LD 1183, and members of the Judiciary Committee to quickly revisit what many feel are the unintended consequences of this new law. Merchants, retailers and many other segments of the Maine economy are hopeful that the committee will act with dispatch to make it clear that state law does not prohibit legitimate, above-board marketing and communications to young people.

We will not belabor related activities that have occurred in this arena prior to this Judiciary Committee hearing, matters including federal court action, pronouncements regarding the enforceability of the law, and the possibility of lawsuits. We assume these topics will be addressed by others better qualified, or are aspects already known to committee members.

Instead, we will limit our comments to feared impacts on merchants and retailers, and suggestions as to how these concerns might be mitigated whether this committee chooses to recommend repeal of LD 1183 and undertakes a fresh start, or whether it decides to address individual problems through amendments.

In any event, the Maine Merchants Association had no problem with the stated original intent of the legislation, to limit the collection of medical related information from minors without parental consent, and would be supportive of attempts to return to that concept, regardless of the route taken.

When the alarm was sounded relative to the possible unintended ramifications of LD 1183, Maine retailers and related industries were quick to express individual

concerns about information that is not similar to the sensitive, private nature of medical related information.

- Would retailers be allowed to continue to enroll young people in teen shopping clubs, verify their checks, enter them into drawings for scholarships or discounts, or provide them with requested product information?
- Would merchants be able to communicate with employees who are minors via email about special employee-only discounts?
- Would merchants who sell prescription glasses and contact lenses be able to send reminder notices to minor-aged consumers?
- Would Maine Guides be able to collect the required information for a fishing license issued to a minor?
- Would a Maine candy-manufacturer be permitted to hold a birthday club for kids?

We have attached draft legislation that we feel would alleviate those concerns. Basically, this proposal reverts to the original intent and only prevents the collection of medical related information from minors without parental permission.

With the critical holiday shopping season fast approaching, retailers who found themselves unwittingly caught in the crosshairs of LD 1183 deserve to be assured that the unintended wrong will be righted at the first legislative opportunity. Indeed, with the economy and resulting state revenues in a seemingly constant state of flux, now is not the time to unnecessarily penalize any segment that services the buying public. Maine Merchants has had at least one large member curtail activities to its teen market, and other concerns for that possibility surfaced in court filings. Clearly, it is not a time for uncertainty.

Maine Merchants Association, like most other business groups in the state, does not abide predatory marketing to teens or any other age group, for any product or service; and it believes Maine businesses have a proud reputation in that regard.

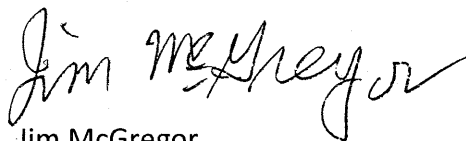
Several diverse segments of the Maine economy are potentially impacted by the new law and many proposed amendments. If the committee opts to form a smaller, more manageable working group, the Maine Merchants Association would be pleased to represent retailing.

We look forward to working with legislative committees and the full legislature to quickly clarify and attain the true intent of LD 1183, and to remove the cloud of uncertainty that is hovering over many businesses and other segments of Maine society.

Sincerely,



Curtis Picard
Executive Director



Jim McGregor
Director of Government Affairs

Proposed language from Maine Merchants Association and members.

An Act To Prevent Predatory Marketing Practices against Minors

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 1055 is enacted to read:

CHAPTER 1055

MARKETING AND DATA COLLECTION PRACTICES

§ 9551. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. ~~Health-related~~Medical-related information. "~~Health~~Medical-related information" means any information collected online that personally identifies an individual by first name or first initial and last name and about an individual or a member of the individual's family relating relates to health, ~~nutrition, drug or medication use, physical or bodily condition, mental health, medical history, medical insurance coverage or claims or other similar data~~ of the individual.

2. Marketing purposes. "Marketing purposes," with respect to the use of ~~health~~medical-related information ~~or personal information~~, means the purposes of marketing or advertising products, goods or services to individuals.

3. Person. "Person" ~~includes~~means an individual, firm, partnership, corporation, association, syndicate, organization, society, business trust, attorney-in-fact and every natural or artificial legal entity.

4. ~~Personal information.~~ "~~Personal information~~" ~~means individually identifiable information, including:~~

A. ~~An individual's first name, or first initial, and last name;~~

B. ~~A home or other physical address;~~

C. ~~A social security number;~~

D. ~~A driver's license number or state identification card number; and~~

E. ~~Information concerning a minor that is collected in combination with an identifier described in this subsection.~~

5. Verifiable parental consent. "Verifiable parental consent" means any reasonable effort, taking into consideration available technology, including a request for authorization for future collection, use and disclosure described in the notice, to ensure that a parent or legal guardian of a minor receives notice of the collection of ~~health~~medical-related~~personal~~ information, use and disclosure

practices and authorizes the collection, use and disclosure, as applicable, of medicalhealth-related information ~~personal information~~ and the subsequent use of that information before that information is collected from that minor.

§ 9552. Unlawful collection and use of data from minors

1. Unlawful collection. It is unlawful for a person to knowingly collect or receive healthmedical-related information, other than information collected for treatment, payment, or healthcare operations, over the Internetonline ~~or personal information~~ for marketing purposes from a minor without first obtaining verifiable parental consent of that minor's parent or legal guardian.

2. Unlawful use. A person may not knowingly sell, offer for sale or otherwise transfer to another person medicalhealth-related information collected online ~~or personal information about a minor without first obtaining verifiable parental consent of the minor's parent or legal guardian~~ if that information:

A. Was unlawfully collected pursuant to subsection 1; or

~~B. Individually identifies the minor; or~~

~~C. Will be used in violation of section 9553.~~

§ 9553. Predatory marketing against minors prohibited

A person may not knowingly use any healthmedical-related information collected online ~~or personal information regarding a minor for marketing purposes~~ ~~the purpose of marketing a product or service to that minor or promoting any course of action for the minor relating to a product~~ without verifiable consent of the minor's parent or legal guardian. Use of information in violation of this section constitutes predatory marketing.

§ 9554. Enforcement

1. Unfair trade practice. Violation of this chapter is an unfair trade practice as prohibited by Title 5, section 207. Each unlawful collection of data or unlawful predatory marketing event in violation of this chapter constitutes a separate violation. The Attorney General may establish procedures for receiving and investigating complaints of violations of this chapter. The procedures may include the development of electronic forms, available over the Internet, by which a person may file a complaint with the Attorney General alleging a violation of this chapter.

~~**2. Civil action; injunction and damages.** Notwithstanding Title 5, section 213, a person about whom information is unlawfully collected or who is the object of predatory marketing in violation of this chapter may bring an action in an appropriate state court for either or both of the following:~~

~~A. An injunction to stop the unlawful collection or predatory marketing; and~~

~~B. Recovery of actual damages from each violation or up to \$250 in damages for each violation, whichever is greater.~~

~~If the court finds there has been a violation of this chapter, the court shall award the petitioner reasonable attorney's fees and costs incurred in connection with the action.~~

~~If the court finds that the defendant willfully or knowingly violated this chapter, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under paragraph B.~~

32. Civil violation; penalty. Notwithstanding the penalty provisions of Title 5, section 209, each violation of this chapter constitutes a civil violation for which a fine may be assessed of:

- A. No less than \$10,000 and no more than \$20,000 for a first violation; and
- B. No less than \$20,000 for a 2nd or subsequent violation.

43. Application of federal law. If the Attorney General finds evidence of a violation of the federal Children's Online Privacy Protection Act of 1998, 15 United States Code, Sections 6501 to 6506 (2007), the Attorney General may bring a civil action pursuant to 15 United States Code, Section 6504 (2007).

Effective September 12, 2009

